IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7205 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TRIKAMBHAI ISHVARBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7205 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/09/2004

ORAL JUDGEMENT

The detenu has been detained under the provisions

of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 23-3-2004 passed by the District Magistrate, Anand, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. According to learned advocate for the petitioner, one case is registered against the present petitioner at Anand Rural Police Station being C.R.No.5037 of 2004 on 10-3-2004 and no statements are recorded. It is the main contention raised by her that the detenu has submitted a representation dated 12-5-2003 to the authority and though it was received on 13-5-2004, no communication has been received by the detenue about the decision taken therein and hence, according to her, the rights guaranteed under Article 22(5) of the Constitution of India are violated which makes the order of detention illegal. Registered A/D slip submitted by her is ordered to be taken on record. She has relied upon a decision in the case of Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. 684 wherein it was held at head note as under:

> "Detention-Unexplained delay of five days in considering and disposing detenu's representation--Mere absence of Minister at Headquarters not sufficient to justify delay-Detention vitiated."

It has been held by the Apex Court in para 9 as under:

> "The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation.It is not enough to say that the delay was very short. Even longer delay can as well be explained. so the test is not the duration or range of delay, but how it is explained by the authority concerned."

It is submitted that a co-detenu has been released by this Court while allowing Special Civil Application No.6578 of 2004 on 8-9-2004 and hence also, it is requested that present detenu be released.

4. In the matter before the Supreme Court in Rajammal (supra), there was a delay of five days. For that also, explanation has been putforward by the authority that Minister was on tour for a period of two days. Still, Apex Court has stated that five days consumed in deciding the representation of the detenu is a delay. In the instant case, it appears that though representation dated 12-5-2004 has been received by the detaining authority on 15-5-2004, it remained undecided and no satisfactory explanation has been put forward by the respondents by filing affidavit. As representation of the petitioner has not been decided by the authority, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal. Since a co-detenu has been released by this Court while allowing Special Civil Application No.6578 of 2004 on 8-9-2004, present detenu is also entitled to the benefit.

5. The petition is allowed. The impugned order of detention dated 23-3-2004 passed against the detenu Trikambhai Ishvarbhai Parmar is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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